

ROUTING AND TRANSMITTAL SLIP		Date
		14 July 86
TO: (Name, office symbol, room number, building, Agency/Post)		Initials Date
1. ADDA		JA 14 JUL 1986
2. DDA		JA 14 JUL 1986
3. MS/DA		mm 15 JUL 1986
4.		
5. ADDA REG.		
Action	File	Write and Return
Approval	For Clearance	For Conversation
As Requested	For Correction	Propose Reply
Circulate	For Your Information	For Me
Comment	Investigate	Signature
Coordination	Justify	
REMARKS		

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.

Phone No.

**EXECUTIVE SECRETARIAT**  
ROUTING SLIP

TO:

		ACTION	INFO	DATE	INITIAL
1	DCI		X		
2	DDCI		X		
3	EXDIR		X		
4	D/ICS				
5	DDI		X		
6	DDA		X		
7	DDO				
8	DDS&T				
9	Chm/NIC				
10	GC		X		
11	IG				
12	Compt				
13	D/OLL				
14	D/PAO		X		
15	D/PERS				
16	VC/NIC				
17	NIO/ECON		X		
18	D/OGI/DI		X		
19	ES		X		
20	C/S		X		
21					
22					

SUSPENSE

Date

Remarks

Executive Secretary  
11 July 86

Date

STAT

THE WHITE HOUSE  
WASHINGTON



Executive Registry

86-3112x

## CABINET AFFAIRS STAFFING MEMORANDUM

Date: 7/7/86 Number: 317,143 Due By: -----  
Subject: Domestic Policy Council Memoranda

ALL CABINET MEMBERS	Action	FYI		Action	FYI
Vice President	<input type="checkbox"/>	<input type="checkbox"/>	CEA	<input type="checkbox"/>	<input checked="" type="checkbox"/>
State	<input type="checkbox"/>	<input checked="" type="checkbox"/>	CEQ	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Treasury	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OSTP	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Defense	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Justice	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Interior	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Agriculture	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Commerce	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Labor	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HHS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Poindexter	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HUD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Svahn	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Transportation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Chew (For WH Staffing)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Energy	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Education	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Chief of Staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
OMB	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
CIA	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
UN	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
USTR	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
EPA	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Executive Secretary for:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
GSA	<input type="checkbox"/>	<input checked="" type="checkbox"/>	DPC	<input type="checkbox"/>	<input checked="" type="checkbox"/>
NASA	<input type="checkbox"/>	<input checked="" type="checkbox"/>	EPC	<input type="checkbox"/>	<input type="checkbox"/>
OPM	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
SBA	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
VA	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

### REMARKS:

Attached for your information are two memoranda from the Attorney General on Administration Policy on Signing Statements; and Guidelines on Consent Decrees, Settlement Agreements and Special Masters.

### RETURN TO:

☒ Alfred H. Kingon  
Cabinet Secretary  
456-2823  
(Ground Floor, West Wing)

☐ Don Clarey  
☐ Rick Davis  
☐ Ed Stucky

DD/A REGISTRY  
FILE: 60-7

Associate Director  
Office of Cabinet Affairs  
456-2800 (Room 235, OE08)

THE WHITE HOUSE

WASHINGTON

July 7, 1986

MEMORANDUM FOR THE DOMESTIC POLICY COUNCIL

FROM:

RALPH C. BLEDSON   
Executive Secretary

RE:

Outline of Administration Policy

Attached are two memorandums from the Attorney General discussed at the April 28, 1986 Domestic Policy Council meeting. They outline the Administration's policy on Presidential signing statements, and guidelines on consent decrees, settlement agreements, and special masters. If you have any questions on either of these, please direct them to the Department of Justice.

attachment

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3. Reservation on Matters Not Addressed in the Signing Statement. The Statement shall indicate that it does not reflect any view by the Administration on matters not addressed and that the administering agency shall develop interpretations of such provisions not inconsistent with the Statement.

The administering agencies, Office of Management and Budget and the Department of Justice shall propose Signing Statements to accompany enrolled bills presented to the President for signature. The Attorney General shall review the Signing Statement for legality as to form and substance.

C. Use of Signing Statements.

Recently the West Publishing Company publicly has agreed to publish signing statements on major bills in the United States Code Congressional and Administrative News (USCCAN). The Department of Justice shall seek to expand the availability of signing statements.

Litigating Divisions within the Department of Justice and agencies with litigation authority are encouraged to review Signing Statements in construing any statute that may be the subject of litigation. Additionally, agencies should review Signing Statements in developing regulations and policy guidelines implementing statutes.



Office of the Attorney General  
Washington, D. C. 20530

July 7, 1986

MEMORANDUM FOR THE DOMESTIC POLICY COUNCIL

FROM: EDWIN MEESE III *Em*  
Attorney General

SUBJECT: Guidelines on Consent Decrees, Settlement  
Agreements and Special Masters

I recently signed litigation policy guidelines dealing with (1) consent decrees and settlement agreements and (2) special masters. These guidelines translate the Administration's views on the appropriate role of the courts into principles that will direct the government's litigation so as to encourage courts to stay within the proper bounds of the judicial function. They will apply to cases where litigating authority rests with the Department of Justice, and I also commend them to you as principles that should be observed in all government litigation.

Consent decrees and settlement agreements are means of terminating litigation without trial. A consent decree is a mandatory court order that is negotiated by the parties and approved by the judge. Its legal effect is that of a judgment and order on the merits. A settlement agreement is a private arrangement between litigants in the nature of a contract, through which a lawsuit is ended without the court's participation.

Both of these mechanisms of settlement are subject to abuse in derogation of the Executive's constitutional and statutory prerogatives. For example, a consent decree can be drafted to bind a head of department to do something that the court could not have ordered under its own authority -- to undertake lobbying activities, for instance. This is improper. No member of the executive branch can give away his own or the President's discretion. Likewise, the consent of the parties cannot expand the remedial authority of the courts, which is governed by the Constitution and statutes. Accordingly, the general principle underlying the consent decree guidelines is that the United States will not agree to terms of consent decrees that the court could not have ordered under its remedial powers. In particular, the guidelines disapprove attempts to bind discretion, to commit unappropriated or unbudgeted funds, or to determine regulatory actions.

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Similar but less stringent restrictions apply to settlements, which are not court orders. Under the guidelines, when a settlement agreement extends to the issuance of regulations, the government must retain its authority to change them pursuant to the Administrative Procedure Act. Also, settlements will not commit the Executive to spend unappropriated, unbudgeted funds.

The other set of guidelines deals with the use of Special Masters. Masters are ad hoc judicial officers appointed by the court for one case and paid for by the parties. They are used fairly frequently in large and difficult litigation, but they sometimes have been appointed in inappropriate circumstances. The fundamental principle underlying these guidelines is that masters are not substitutes for judges and other regular judicial officers (such as United States Magistrates) and are properly appointed only in the narrow range of cases where they will deal with a large number of technical and relatively minor issues.

In addition to delineating the correctly limited role of masters, the guidelines specifically identify several improper uses of masters and provide criteria for determining the government's position as to whether a master should be appointed and who it should be. The guidelines are specifically drafted to protect the rights of litigants to plenary judicial consideration of their case and of the United States to the preservation of the government's policy prerogatives. Because there is no general waiver of sovereign immunity with respect to masters' costs, the government cannot be ordered to pay them. Accordingly, the guidelines set out the circumstances under which the United States will agree voluntarily to contribute to the expenses of a master.

Together, these directives will help implement in day-to-day litigation the basic jurisprudential and constitutional principles on which the President campaigned and which he has charged us to carry out. They represent another step in our ongoing effort to maintain the correct separation of roles of the branches of government.